COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	)	**D.T.E. 04-33**

OPPOSITION OF VERIZON MASSACHUSETTS TO
MOTION TO EXPAND THE PROCEDURAL SCHEDULE

Verizon Massachusetts ("Verizon MA") hereby opposes the CLECs' Motion to Expand the Procedural Schedule, filed on March 16, 2005. The CLECs ask the Department to authorize testimony and discovery and then hold a hearing in order to determine "which Verizon wire centers are subject to the various unbundling criteria for loops and transport that the FCC established in its *Triennial Review Remand Order*." The CLECs' claim that the Department must make such a determination in order to address Issue 3 of the parties' Supplemental List of Issues filed on March 4, and that the TRRO itself entitles the CLECs to incorporate such determination into their interconnection agreements with Verizon MA.

The CLECs are demonstrably wrong on both counts. The Department may, and should, fully resolve Issue 3 without ever reaching the fact-intensive and time-consuming issue raised by the CLECs. Further, the TRRO does not require the parties to amend their ICAs to address that issue. To the contrary, ¶234 of the TRRO establishes a system for ordering high-capacity loops and transport that is intended to function without any

contract amendment and renders any such amendment entirely voluntary. The Motion has no merit and should be denied.

Issue 3 of the Supplemental List states as follows:

> Should the DTE determine which central offices satisfy the various unbundling criteria for loops and transport? If so, which central offices satisfy those criteria?

The CLECs ask the Department to ignore the first, critical, question in Issue 3 and go directly to the second, but the Department cannot reach that question unless it answers the first question in the affirmative. The correct answer to that question, however, is No, the Department should *not* determine in this arbitration which central offices satisfy the FCC's unbundling criteria for loops and transport.

In ¶234 of the TRRO, the FCC acknowledged that its new rules governing access to high-capacity loops and dedicated transport depend on objective facts. It then stated as follows:

> We therefore hold that to submit an order to obtain a high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI above and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3). Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI above, the incumbent LEC must immediately process the request. To the extent that an incumbent LEC seeks to challenge any such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in its interconnection agreements. In other words, the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority.

(Footnotes omitted.) Thus, the FCC established a complete system by which CLECs may order and obtain access to UNE loops and transport consistent with the new unbundling rules. And they can do so *without changing their existing interconnection agreements*. Moreover, because Verizon MA must immediately process a CLEC-certified order for such a UNE, the existence of a dispute between Verizon MA and the requesting carrier over the availability of the requested UNE will not prevent the CLEC from obtaining that element at UNE rates in the first instance. Thus, CLECs suffer no harm in the absence of a contractual statement defining the wire centers that satisfy the various criteria for unbundling of loops and transport.

The CLECs' argument that the TRRO *requires* the Department to insert new terms into the parties' ICAs to govern the ordering of UNE loops and transport or that the CLECs are somehow *entitled* to such terms is inconsistent with the specific terms of TRRO ¶234. The CLECs offer scant support for their position in the Motion, but they do cite, once again, the general direction in ¶233 of the TRRO that "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act." (Motion at 6.) This statement, however, neither limits implementation of the *TRRO* to the section 252 amendment process nor negates the specific directives of the TRRO, such as the UNE-ordering provisions of ¶234. Indeed, ¶¶ 233 and 234 taken together comprise the entire section of the TRRO under the heading "Implementation of Unbundling Terms." The FCC clearly intended both of those paragraphs to govern implementation of its decision. Contrary to the CLECs' contention then, not *everything* in the *TRRO* is subject to negotiation.

Moreover, the general directive of ¶233 must give way in the face of the terms of ¶234 specifically addressing the ordering of loop and transport UNEs. This is placed beyond doubt by footnote 660 of the TRRO, appended at the close of ¶234, which states:

> Of course, this mechanism for addressing incumbent LEC challenges to self-certification is simply a *default* process, and pursuant to section 252(a)(1), carriers *remain free* to negotiate alternative arrangements. 47 U.S.C. §252(a)(1).

(Emphasis added.) Thus, as a *default* system, the process established by the FCC in ¶234 to resolve any disputes as to the availability of loop and transport UNEs on a case-by-case basis under dispute resolution procedures is intended to be implemented without amending the parties' contracts. That is inherent in the meaning of "default." Furthermore, the FCC's statement that the parties "remain free to negotiate alternative arrangements" means such negotiations are optional; the parties also remain free *not* to negotiate alternative arrangements. Had the FCC intended to *order* the parties to implement its UNE-ordering system through amendment of their contracts, it would have said so.

Here, the CLECs seek to force Verizon MA to accept an alternative system for ordering UNE loops and transport and for resolving related disputes that is completely at odds with the default system established by the FCC. Paragraph 234 of the TRRO requires "a requesting carrier" to undertake a reasonably diligent inquiry before ordering a UNE loop or transport and then based on that inquiry "self-certify" that the order is consistent with the TRRO's requirements. In contrast, the CLECs ask *the Department* to conduct that inquiry and ask *the Department* – by its decision in this arbitration – to certify which central offices satisfy which FCC criteria. Paragraph 234 anticipates that the requesting carrier will undertake an inquiry each time it prepares to submit a UNE

loop or transport order, but the CLECs would have a single inquiry conducted now and presumably would rely on the results of that inquiry in submitting all future orders. More importantly, the case-by-case dispute resolution process set forth in ¶234 is sufficiently flexible to account for changes in facts affecting central offices, such as installation of new collocation arrangements. In contrast, the CLECs seek to freeze in place an initial decision applying the FCC's unbundling criteria to every central office in the state, by memorializing it in a list of offices to be incorporated into the ICAs. Presumably, the CLECs will seek to prohibit any changes in that list outside of a lengthy negotiation and arbitration process. Verizon MA is not obligated to agree to the CLECs' alternative arrangement, and the CLECs' have no right to force it upon Verizon MA in this arbitration.[1]

In any event, even if the Department were to consider the issue raised by the CLECs – and it should not – the CLECs' proposal of multiple rounds of testimony and discovery followed by a multi-day hearing is far more complex and lengthy than the issue warrants, and the many factual issues, sub-issues and sub-sub-issues the CLECs' lawyers conjure up in order to maximize the delay they can inject into the process (*see* Motion ¶21) are simply inappropriate. The FCC recognized in the TRRO that its "rules governing access to dedicated transport and high-capacity loops evaluate impairment based upon *objective and readily obtainable facts*, such as the number of business lines

[1] The CLECs assert that, because they intend to submit contract language that would include lists of wire centers that meet the FCC's unbundling criteria, the identification of such wire centers is "an open issue" that the Department must resolve in this arbitration. (Motion at 6.) Of course, since the CLECs' have no legal right to amend their contracts in the fashion they intend, the Department should never reach the issue the CLECs propose.

or the number of facilities-based competitors in a particular market." TRRO ¶234 (Emphasis added, footnotes omitted). The CLECs' eagerness to convert a simple factual inquiry into a massive, "factually intensive" investigation (Motion ¶19, at 8) underscores the true intent of the Motion and the likelihood that granting the Motion will eventually result in extensive delay in the progress of this case.

Conclusion

For the above reasons, the Department should deny the Motion to Expand the Procedural Schedule.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorneys,

/s/Alexander W. Moore
Bruce P. Beausejour
Alexander W. Moore
185 Franklin Street – 13th Floor
Boston, MA 02110-1585
(617) 743-2265

Dated: March 21, 2005